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Attorneys for Fire Victim Claimants, including Kathleen Deiner and Charles Deiner

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

<i>In re:</i>	) <b>Case No. 19-30088 (DM)</b>
	) Chapter 11
PG&E CORPORATION	) (Lead Case)
	) (Jointly Administered)
-and-	)
PACIFIC GAS AND ELECTRIC	) <b>MOTION TO ALLOW/DEEM TIMELY</b>
COMPANY	) <b>LATE FILING OF PROOF OF CLAIM</b>
Debtors.	) <b>BY KATHLEEN DEINER AND</b>
	) <b>CHARLES DEINER; MEMORANDUM</b>
<input type="checkbox"/> Affects PG&E Corporation	) <b>OF POINTS AND AUTHORITIES IN</b>
	) <b>SUPPORT THEREOF; DECLARATION</b>
<input type="checkbox"/> Affects Pacific Gas & Electric	) <b>OF KATHLEEN DEINER</b>
	)
<input checked="" type="checkbox"/> Affects Both Debtors	) Date: June 29, 2022
	) Time: 10:00 a.m.
	) Place: <b>To Be Held Telephonically</b>
<i>All papers shall be filed in the Lead Case,</i>	) United States Bankruptcy Court
<i>No.19-30088 (DM)</i>	) Courtroom 17
	) 450 Golden Gate Avenue
	) 16 <sup>th</sup> Floor
	) San Francisco, CA
	Judge: Honorable Dennis Montali

**Objection Deadline: June 22, 2022**

The Kane Law Firm respectfully files this motion to allow the late filing of a proof of claim and deem the proof of claim as having been timely filed for the moving party herein, Kathleen Deiner and Charles Deiner.

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1 I.

2 **SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of  
4 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*  
5 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on  
6 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be  
7 considered are as follows:

- 8 1. The danger of prejudice to the Debtor,  
9 2. The length of delay and its potential impact on judicial proceedings,  
10 3. The reason for the delay, including whether it was within the reasonable control of the  
11 movant, and  
12 4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

13 In this case, Charles and Kathleen Deiner, who have been married for over 50 years, lost  
14 their home and nearly all their possessions in the fire. Their home was located at 8416 Montna  
15 Drive, Paradise, California 95969. They were unable to evacuate together and were fearful of  
16 never seeing each other again. Although, they were re-united the evening of the fire, they were  
17 unable to return to a home for nearly 4 months. After the fire, the Deiners had to care for Mr.  
18 Deiner's elderly parents, help them find a place to live and file insurance claims. The insurance  
19 claim process was overwhelmingly as they had to file insurance claims for themselves and the  
20 elderly Deiners. The did not file a claim sooner because they were dealing with the insurance  
21 process and mistakenly thought that all their losses would be covered by insurance.

22 As set forth below, the movant meets all these factors. Indeed, if this motion is *not* granted  
23 it is the movant who will suffer substantial prejudice.

24 II.

25 **PROCEDURAL BACKGROUND**

26 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric  
27 Company ("Debtors") filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the  
28 Court entered an order establishing October 21, 2019 ("the bar date") as the deadline for Fire

1 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was  
2 extended to December 31, 2019(“the “extended bar date.”). *See* Dkt. 4872.

### 3 III.

#### 4 FACTUAL BACKGROUND

5 Charles and Kathleen Deinerlost their home of many years in the Camp Fire. They lived  
6 at Montna Drive, Paradise, California 95969. The house burned to the ground, taking with it a  
7 lifetime of possessions and memories. The Deiners have been married for over 50 years. On the  
8 day of the fire, Mr. Deiner had to evacuate his elderly parents and Ms. Deiner had to evacuate on  
9 her own. They feared that they would never see each other again. They were reunited the  
10 evening of the fire but were without a permanent place to live for nearly 4 months. They did not  
11 file a claim sooner because the were overwhelmed with the insurance process. They not only had  
12 to file a claim for themselves but also had to take care of the elderly Deiners’ insurance claim.  
13 They mistakenly thought that the insurance would cover all their losses, but it did not. They only  
14 recently learned that they could file a late claim. They have done so, and the claim number is  
15 108430.

### 16 IV.

#### 17 ARGUMENT

18 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion  
19 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

20 (b) Enlargement.

21 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,  
22 when an act is required or allowed to be done at or within a specified period by  
23 these rules or by a notice given thereunder or by order of court, the court for cause  
24 shown may at any time in its discretion (1) with or without motion or notice order  
25 the period enlarged if the request therefor is made before the expiration of the  
26 period originally prescribed or as extended by a previous order or (2) **on motion  
made after the expiration of the specified period permit the act to be done  
where the failure to act was the result of excusable neglect.**

27 Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

28 Determination of excusable neglect has been interpreted by the United States Supreme  
Court as an equitable consideration.

“We conclude the determination at bottom an equitable one, taking account of all relevant  
circumstances surrounding the party’s omission. These include. . .the danger of prejudice

1 to the debtor, the length of the delay and its potential impact on judicial proceedings, the  
2 reason for the delay, including whether it was within the reasonable control of the movant,  
and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc.*  
*Ltd.P’ship*, 507 U.S. 380, 395 (1993)

3  
4 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the  
5 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.  
6 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the  
7 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

8 Further, the delay is not significant. The Trust has only completed determinations (not  
9 reconsiderations or appeals) on approximately 50% of all claims. Allowing the late claim will not  
10 delay the proceedings.

11 The reason for the delay in filing a claim was that Charles and Kathleen Deiner  
12 simply misunderstood the process. Excusable neglect will be found even where sophisticated  
13 attorneys miss a deadline. *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1006 (9<sup>th</sup>  
14 Cir. 2006). The case for excusable neglect is even more compelling when the mistake was made  
15 by an unrepresented layperson. *Id.*

16 Further, Kathleen and Charles Deiner acted in good faith. The failure to file was not based  
17 on litigation tactics where a party deliberately misses a deadline to gain advantage. (See e.g.,  
18 *Venice Baking Co. v. Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533 where relief was  
19 denied because counsel purposefully chose not to oppose a motion as a litigation tactic). Here the  
20 delay was inadvertent and the movant’s lack of understanding of the claims process after a trust  
21 fund had already been established to satisfy the claim.

22 And, finally, the likelihood of injustice is great, if this claim is not permitted. Charles and  
23 Kathleen Deiner are Camp Fire victims whose primary avenue for compensation is through this  
24 bankruptcy.

25 V.

26 **CONCLUSION**

27 For the reasons set forth above, Movant respectfully requests that this Court enter an  
28 Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

